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<u>Federal Communications Commission</u>	
Docket No.	<u>93-155</u> Exhibit No. <u>SIX</u>
Presented by <u>MASS MEDIA BUREAU</u>	
Disposition	Identified <u>✓</u>
	Received <u>✓</u>
	Rejected _____
Reporter <u>M.K. FLEISHMAN</u>	
Date <u>10/26/93</u>	

# MASS MEDIA BUREAU EX 6

BEFORE THE

## Federal Communications Commission

WASHINGTON, D. C. 20554

In re Application of

RICHARD P. BOTT, II

Assignor

and

WESTERN COMMUNICATIONS, INC.

Assignee

For Assignment of the Construction  
Permit of Unbuilt Station KCVI(FM),  
Blackfoot, Idaho

To: Chief, Mass Media Bureau

File No. BAPH-920917GO

RECEIVED

DEC - 8 1992

FEDERAL  
COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

### REQUEST FOR LEAVE TO RESPOND AND RESPONSE

Richard P. Bott, II, permittee of unbuilt Station KCVI(FM), Blackfoot, Idaho, herein requests leave to submit a limited response to the "Reply to Opposition to Petition to Deny" filed by Radio Representatives, Inc. ("RRI") with regard to the above-captioned application. In support of this request, the following is stated:

#### Request for Leave to Respond

Although Mr. Bott believes that RRI's petition to deny and its reply are without merit, Mr. Bott does not seek to file a response for the purposes of rearguing his position. Rather, he seeks to correct certain factual misstatements in RRI's reply. Thus, Mr. Bott believes that acceptance and consideration of the response

offered herewith will be of assistance to the Commission in the prompt disposition of RRI's allegations.

**Response**

1. At pp. 13-14 of its reply, RRI argues the fact Station KRSS(FM), Chubbuck, Idaho, adopted a religious format, the format Mr. Bott had chosen to use on his nearby Blackfoot station, did not justify Mr. Bott's decision to assign the Blackfoot construction permit. As part of that argument, RRI states KRSS(FM) has not yet constructed its authorized Class C2 facilities. That statement is incorrect. Station KRSS(FM) was given authority to construct Class C2 facilities with the grant of construction permit File No. BPH-900612IA. See Attachment A hereto. On April 6, 1992, the licensee of Station KRSS(FM) informed the Commission that the station had begun operation under automatic program test authority with the facilities specified in that construction permit. See Attachment B hereto.

2. At pp. 14-15 of its reply, RRI refers to Station KCIV, Mount Bullion, California, as "another Bott facility." In that regard, RRI states that KCIV has more competitors than would Mr. Bott's Blackfoot station, and that only a supposed 10% of the programs carried on "Bott-owned Station KCIV" are carried on Station KRSS(FM). It should be noted, however, that KCIV is owned

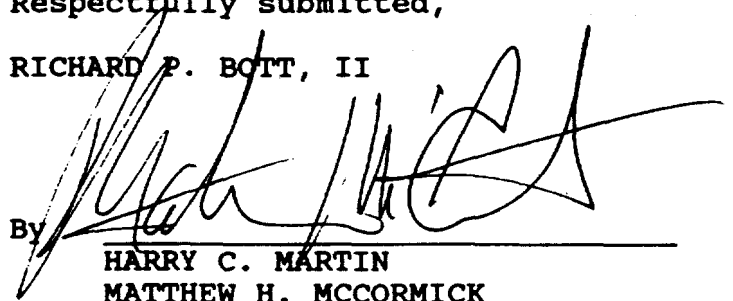
not by Richard P. Bott, II, but by Bott Communications, Inc., of which Mr. Bott, II holds only 20% of the stock.<sup>1/</sup>

This response is not intended to be all inclusive, but rather intended to point out two most obvious factual errors in RRI's reply.

WHEREFORE, in light of all circumstances present, it is respectfully requested that leave to respond be GRANTED and that the response set forth herein be CONSIDERED.

Respectfully submitted,

RICHARD P. BOTT, II

By   
HARRY C. MARTIN  
MATTHEW H. MCCORMICK

Its Counsel

Reddy, Begley & Martin  
1001 22nd Street, N.W.  
Suite 350  
Washington, D.C. 20037

December 8, 1992

---

<sup>1/</sup> The remaining 80% is owned by Bott Broadcasting Company, which is 100% jointly owned by Richard P. Bott, Sr., and Sherley Bott. Mr. Bott, II, is an officer and director of Bott Broadcasting Company and Bott Communications, Inc.

**ATTACHMENT A**

FEDERAL COMMUNICATIONS COMMISSION

FM BROADCAST STATION CONSTRUCTION PERMIT



Official Mailing Address:

CHUBBUCK COMMUNITY BROADCASTERS, INC  
P.O. BOX Z  
POCATELLO, ID 83206

Authorizing Official:

Dale E. Bickel  
Supervisory Engineer, FM Branch  
Audio Services Division  
Mass Media Bureau

Grant Date: DEC 11 1990

Call sign: KRCD-FM

Permit File No.: BPH-900612IA

This permit expires 3:00 am.  
local time 18 months after  
grant date specified above

Subject to the provisions of the Communications Act of 1934, as amended, subsequent acts and treaties, and all regulations heretofore or hereafter made by this Commission, and further subject to the conditions set forth in this permit, the permittee is hereby authorized to construct the radio transmitting apparatus herein described. Installation and adjustment of equipment not specifically set forth herein shall be in accordance with representations contained in the permittee's application for construction permit except for such modifications as are presently permitted, without application, by the Commission's Rules.

This permit shall be automatically forfeited if the station is not ready for operation within the time specified (date of expiration) or within such further time as the Commission may allow, unless completion of the station is prevented by causes not under the control of the permittee. See Sections 73.3598, 73.3599 and 73.3534 of the Commission's Rules.

Equipment and program tests shall be conducted only pursuant to Sections 73.1610 and 73.1620 of the Commission's Rules.

Name of permittee:

CHUBBUCK COMMUNITY BROADCASTERS, INC.

Station Location:

ID-CHUBBUCK

Frequency (MHz): 98.5

Channel: 253

Class: C2

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Hours of Operation: Unlimited

Transmitter location (address or description):

SW 1/4 of SE 1/4 of SW 1/4 of SE 1/4 of Sect. 3, T6S, R35E;  
6 miles east of downtown Chubbuck, Idaho.

Transmitter: Type accepted. See Sections 73.1660, 73.1665 and 73.1670  
of the Commission's Rules.

Transmitter output power: As required to achieve authorized ERP.

Antenna type: (directional or non-directional): Non-directional

Antenna coordinates: North Latitude: 42 55 15.0  
West Longitude: 112 20 44.0

	Horizontally Polarized Antenna	Vertically Polarized Antenna
Effective radiated power in the horizontal plane (kW) . . . . . :	6.2	6.2
Height of radiation center above ground (meters) . . . . . :	122.0	122.0
Height of radiation center above mean sea level (meters) . . . . . :	2023.0	2023.0
Height of radiation center above average terrain (meters) . . . . . :	410.0	410.0
Overall height of antenna structure above ground (including obstruction lighting, if any) . . . . . :	190.0 meters	

Obstruction marking and lighting specifications for antenna structure:

It is to be expressly understood that the issuance of these specifications is in no way to be considered as precluding additional or modified marking or lighting as may hereafter be required under the provisions of Section 303(q) of the Communications Act of 1934, as amended.

Paragraph 1.0, FCC Form 715 (March 1978):

Antenna structures shall be painted throughout their height with alternate bands of aviation surface orange and white, terminating with aviation surface orange bands at both top and bottom. The width of the bands shall be equal and approximately one-seventh the height of the structure, provided however, that the bands shall not be more than 100 feet nor less than 1 and 1/2 feet in width. All towers shall be cleaned and repainted as often as necessary to maintain good visibility.

Paragraph 3.0, FCC Form 715 (March 1978):

There shall be installed at the top of the structure one 300 m/m electric code beacon equipped with two 620- or 700-watt lamps (PS-40, Code Beacon type), both lamps to burn simultaneously, and equipped with aviation red color filters. Where a rod or other construction of not more than 20 feet in height and incapable of supporting this beacon is mounted on top of the structure and it is determined that this additional construction does not permit unobstructed visibility of the code beacon from aircraft at any normal angle of approach, there shall be installed two such beacons positioned so as to insure unobstructed visibility of at least one of the beacons from aircraft at any normal angle of approach. The beacons shall be equipped with a flashing mechanism producing not more than 40 flashes per minute nor less than 12 flashes per minute with a period of darkness equal to approximately one-half of the luminous period.

Paragraph 5.0, FCC Form 715 (March 1978):

At approximately two-fifths of the over-all height of the tower one similar flashing 300 m/m electric code beacon shall be installed in such position within the tower proper that the structural members will not impair the visibility of this beacon from aircraft at any normal angle of approach. In the event this beacon cannot be installed in a manner to insure unobstructed visibility of it from aircraft at any normal angle of approach, there shall be installed two such beacons. Each beacon shall be mounted on the outside of diagonally opposite corners or opposite sides of the tower at the prescribed height.

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Paragraph 14.0, FCC Form 715 (March 1978):

On levels at approximately four-fifths, three-fifths and one-fifth of the over-all height of the tower, at least one 116- or 125-watt lamp (A21/TS) enclosed in an aviation red obstruction light globe shall be installed on each outside corner of the structure.

Paragraph 21.0, FCC Form 715 (March 1978):

All lighting shall burn continuously or shall be controlled by a light sensitive device adjusted so that the lights will be turned on at a north sky light intensity level of about 35 foot candles and turned off at a north sky light intensity level of about 58 foot candles.

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**ATTACHMENT B**

LAW OFFICES  
BROWN FINN & NIETERT, CHARTERED  
SUITE 660  
1920 N STREET, N.W.  
WASHINGTON, D.C. 20036  
TEL (202) 687-0600  
FAX (202) 457-0126

April 6, 1992

Donna R. Searcy  
Secretary  
Federal Communications Commission  
1919 M Street, N.W., Room 222  
Washington, D.C. 20554

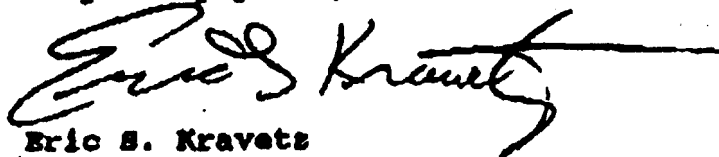
Re: KRSS(FM)  
Chubbuck, Idaho

Dear Ms. Searcy:

On behalf of our client, Calvary Chapel of Costa Mesa, Inc., permittee to modify the facilities of Station KRSS(FM), Chubbuck, Idaho (File No. BPH-900612IA, granted December 11, 1990), the Commission is respectfully advised that the permittee has today commenced program tests pursuant to automatic program test authority.

Please direct any inquiry concerning this submission to the undersigned.

Very truly yours,

  
Eric S. Kravetz

ESK/Searcy.KRS/phm

bcc: Law Phelps

**CERTIFICATE OF SERVICE**

I, Marilyn L. Phillips, hereby certify that on this 8th day of December, 1992, copies of the foregoing **REQUEST FOR LEAVE TO RESPOND AND RESPONSE** were hand delivered or mailed, first class, postage prepaid, to the following:

Daniel J. Alpert, Esquire  
1250 Connecticut Ave., N.W.  
Washington, D.C. 20036

Lester W. Spillane, Esquire  
1040 Main Street  
Suite 208  
P.O. Box 670  
Napa, CA 94559

David D. Oxenford, Jr., Esquire  
Fisher Wayland Cooper & Leader  
1255 23rd Street, N.W.  
Suite 800  
Washington, D.C. 20037

  
MARILYN L. PHILLIPS

\* Hand Delivered

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<b>Federal Communications Commission</b>	
Docket No. <u>93-165</u>	Exhibit No. <u>SEVEN</u>
Presented by <u>MASS MEDIA BUREAU</u>	
Disposition	Identified <input checked="" type="checkbox"/>
	Received <input checked="" type="checkbox"/>
	Rejected <input type="checkbox"/>
Reporter <u>M.K. FLEISHMAN</u>	
Date <u>10/26/93</u>	

MASS MEDIA BUREAU EX 7 TRIPLICATE

RECEIVED

MAY 14 1993

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In re Application of )

RICHARD P. BOTT, II )

Assignor )

and )

WESTERN COMMUNICATIONS, INC. )

Assignee )

File No. BAPH-920917GO

For Assignment of the Construction  
Permit of Unbuilt Station KCVI(FM),  
Blackfoot, Idaho

To: Chief, Mass Media Bureau

SUPPLEMENT TO PETITION TO DENY

Radio Representatives, Inc. ("RRI"), by its attorneys, hereby submits this Supplement to its October 26, 1992 Petition to Deny the above-referenced application to assign the construction permit of unbuilt FM station KCVI, Blackfoot, Idaho. This Supplement addresses the relevance of recent developments in the Commission's comparative licensing policies which bear directly on the subject application. In support whereof the following is shown.

I. Background - Basis for Petition to Deny.

The material facts on which RRI's Petition to Deny is based are not in dispute. The Federal Communications Commission awarded a construction permit to Richard P. Bott, II ("Bott") and denied the competing application of RRI following a comparative hearing. Bott prevailed on the basis of his unconditional commitments to relocate to Blackfoot, Idaho and to work full-time at KCVI as General Manager. Although RRI received preferences under the diversification, comparative coverage and auxiliary power criteria,

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these were insufficient to overcome Bott's substantially superior quantitative integration proposal (100% to 0%). Initial Decision of Administrative Law Judge Edward Luton, 3 FCC Rcd 7094 (ALJ 1988). Ultimately, on February 22, 1991, the United States Court of Appeals affirmed the Commission's action.<sup>1</sup>

Bott now seeks to abandon his integration commitment and sell the KCVI construction permit. Bott maintains that so long as he does not profit from the proposed assignment, he has an unfettered right to abrogate the promises on which the Commission determined that grant of his application would best serve "the public interest, convenience and necessity." Citing Eagle 22, Limited, 7 FCC Rcd 5295, 5297 (1992) and TV-8, Inc., 2 FCC Rcd 1218, 1220 (1987), he claims that he must satisfy only the anti-profiting requirements of Section 73.3597(c)-(d). He argues in the alternative that he also satisfies the Section 73.3597(a) "changed circumstances" exception to the one-year operating station holding period requirement. Bott claims that changed market conditions, involving inherently mercurial station format issues which he did not decide until after the Court's affirmance, is a sufficient excuse to pass Commission scrutiny under this standard.

RRI has previously shown that Bott is mistaken about the Commission's rules and policies which apply in this context. The

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<sup>1</sup> RRI remains interested in acquiring the Blackfoot construction permit on terms consistent with its past representations to the Commission. On October 28, 1992 RRI filed a Petition for Recall of the Mandate of the Court and for Remand to Reopen the Record. Moreover, RRI has requested that the Commission reopen the record in the Blackfoot comparative licensing proceeding to allow for the receipt of information relating to the subject assignment of permit application.

Commission closely scrutinizes the comparative implications raised by an assignment of permit application. Urban Telecommunications Corp., 7 FCC Rcd 3867, 3869 (1992). Moreover, the Review Board has made clear that integration credit must be denied when a commitment is conditioned on the "fickle vicissitudes of business fortune ..."Victorson Group, Inc., 6 FCC Rcd 1697, 1699 (Rev. Bd. 1991). The filing of the subject application only serves to demonstrate that Bott's integration pledge was contingent, rather than fixed and permanent in nature. Under these circumstances, the assignment application should be denied or designated for hearing.

II. Recent Developments Lend Still Further Strength to RRI's Petition.

RRI submits this Supplement not to reargue issues previously addressed by the parties but to measure the factual circumstances raised by this application against the Commission's most recent articulation of its integration policies. In Flagstaff Broadcasting Foundation v. FCC, No. 90-1587 (D.C. Cir. 1992), the U.S. Court of Appeals for the D.C. Circuit observed that the Commission has "never" reviewed its integration policies. Flagstaff, Slip Op. at 10. The Flagstaff Court also expressed its dissatisfaction with the Commission's recent "summary dismissal" of Susan Bechtel's application which was before the FCC on remand from the Court in Anchor Broadcasting Limited Partnership, 7 FCC Rcd 4566 (1992) ("Anchor Broadcasting"). In response to these expressions of judicial concern, the Commission has attempted to provide a more detailed rationale of its integration policies in its reconsideration of Anchor Broadcasting. Anchor Broadcasting



Limited Partnership, FCC 93-115 (released March 10, 1993) ("Anchor Memorandum Order and Opinion").

In the Anchor Memorandum Opinion and Order, the Commission explains that the integration factor predicts "which applicant will more likely be aware of and responsive to the needs of the community and to fulfill those needs on a continuing basis." Id. at ¶ 13 (citations omitted)(emphasis added). The integration criterion is grounded on the Commission's "predictive judgment" that this standard captures three characteristics of significant public interest dimension: integrated station ownership's heightened interest in station operations; integrated station ownership's heightened awareness of community interests; and the benefits which flow from the identity of legal accountability and day-to-day control.

[I]ntegration provides structural, and therefore more objective, assurances that the licensee will serve the public interest ....[A]d hoc assessment[s are] inherently less certain than consistent reliance on an objective structural factor such as integration.

Id. at ¶ 16 (footnote omitted).

RRI respectfully submits that permitting an applicant to renounce an integration commitment on the basis of ephemeral changes in local radio market conditions is fundamentally inconsistent with the Commission's articulated integration rationale. No applicant, permittee or licensee has any protectable interest in a specific format or in limiting the entrance of new competitors into a market. As demonstrated previously, the FCC has consistently declined to recognize the competitive status of

stations in determining the public interest. Thus, these kinds of changes are not of sufficient importance to justify the abrogation of comparative commitments.

Every prevailing applicant will be able to identify some change in business circumstances comparable to those identified by Bott that occurs between the time that it sets forth its integration proposal and the award of a broadcast authorization. In these circumstances, there would be no "structural" or "objective" assurance that any comparative promise would result in superior service to the public because there could never be any reasonable assurance that the applicant would effectuate the proposal. The public interest will be advanced only when adequate safeguards and enforcement mechanisms stand behind the Commission's "predictive judgment." Bott asks the Commission to abandon even the pretense of enforcement.

Bott's trivial post hoc rationalization for abandoning his integration pledge wholly eviscerates the meaningfulness of such commitments and the integrity of the hearing process. Approving this assignment would reduce the FCC's comparative licensing to a charade. If commitments can be shed for little or no reason, the process becomes nothing more than a comparison of idle claims. The fact that Bott would not profit from the sale of the construction permit does not save the integrity of the process. Bott seeks Commission approval for a policy that would allow any permittee to assign a broadcast authorization to a third party who has never participated in the crucible of an evidentiary hearing and who may or may not bring those public interest benefits identified in the

1965 Policy Statement and subsequent precedent to the operation of the station. It is the evaluation of precisely these issues which consume the resources of both the Commission and the applicants and which distinguish the prevailing applicant from its competitors. Allowing the sale of a permit on so frivolous a basis as format changes in a market blithely severs the comparative evaluation of applicants and the service benefits which the public would derive from the ultimate permittee. Such a policy is indefensible.

Moreover, consent to the proposed KCVI assignment of permit would open up comparative hearings to further abuses. In a process that can be long, expensive, and capricious, the opportunity to not lose the substantial sums which must be expended in litigation will influence behavior in the same ways as would the opportunity to profit from the filing of speculative applications. Applicants will be encouraged to advance the same inflated comparative commitments with which the FCC has become too familiar since adoption of the 1965 Policy Statement. Such a course could substantially reduce an applicant's risks. If those promises prove economically untenable, they could be abandoned without detriment following the award of a construction permit based on "changed circumstances" and the presence of a buyer willing to reimburse a permittee for his expenses.

Finally, the proposed assignment flatly contravenes the policies which the Commission sought to advance in Proposals to Reform the Commission's Comparative Hearing Process to Expedite the Resolution of Cases, 6 FCC Rcd 157, 160, clarified, 6 FCC Rcd 3403 (1990). In this action the Commission modified the Ruarch policy,

sharply limiting the ability of applicants to disavow comparative commitments in the context of a global settlement. Under the revised rule, the last opportunity to abandon integration commitments is the date on which hearing exhibits are exchanged or July 1, 1991 (the effective date of the Ruarch policy revisions), whichever is later.<sup>2</sup> Clearly, Bott's request comes too late. Thus, the Mass Media Bureau has recently opposed a post-Initial Decision settlement proposal in the Gifford, Florida FM proceeding where the proposed permittee seeks to abandon its integration commitment. The Bureau contends that the award of a construction permit to an applicant in these circumstances is improper. See Order, FCC 93R-11, MM Docket 90-170 (released April 12, 1993). The Bureau is correct.

Radio Representatives, Inc. believes that recent Court and Commission actions lend added weight to its Petition to Deny the application to assign the KCVI(FM) construction permit to Western

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<sup>2</sup> Technically, this Ruarch policy limitation concerns the withdrawal of integration pledges in the context of settlements. However, allowing prevailing applicants to freely escape such pledges post-grant by assigning construction permits to commitment-free third parties would create an exception which swallows up both the new rule, Section 73.1620(g), and the policies it is intended to advance.

Communications, Inc. For the foregoing reasons, the Commission should deny the proposed assignment of permit application.

Respectfully submitted,

RADIO REPRESENTATIVES, INC.

By: Gerry Stevens-Kittner  
Gerald Stevens-Kittner  
Peter H. Doyle  
ARTER & HADDEN  
1801 K Street  
Suite 400K  
Washington, D.C. 20006

Its Attorneys

May 14, 1993

CERTIFICATE OF SERVICE

I, Peter H. Doyle, hereby certify that a true and correct copy of the foregoing document has been served by first class mail, postage-prepaid on the following persons this 14th day of May, 1993:

Harry C. Martin, Esq.  
Cheryl A. Kenny, Esq.  
Reddy Begley & Martin  
1001 22nd Street, N.W.  
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Suite 208  
Post Office Box 670  
Napa, CA 94559

David D. Oxenford, Jr., Esq.  
Fisher Wayland Cooper & Leader  
1255 23rd Street, N.W.  
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Washington, D.C. 20037

\*Roy J. Stewart, Chief  
Mass Media Bureau  
Federal Communications Commission  
1919 M Street, N.W.  
Room 314  
Washington, D.C. 20554

\*Sheldon M. Guttman, Esq.  
Associate General Counsel  
Office of General Counsel  
Federal Communications Commission  
1919 M Street, N.W.  
Room 602  
Washington, D.C. 20554

\*Mr. Michael Wagner  
Mass Media Bureau  
Federal Communications Commission  
1919 M Street, N.W.  
Room 332  
Washington, D.C. 20554

\*Mr. W. Jan Gay  
Assistant Chief  
Audio Services Division  
Federal Communications Commission  
1919 M Street, N.W.  
Room 302  
Washington, D.C. 20554



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Peter H. Doyle

\*By Hand Delivery

<b>Federal Communications Commission</b>	
Docket No. <u>93-165</u>	Exhibit No. <u>EIGHT</u>
Presented by <u>MASS MEDIA BUREAU</u>	
Disposition	Identified <input checked="" type="checkbox"/>
	Received <input checked="" type="checkbox"/>
	Rejected <input type="checkbox"/>
Reporter <u>M.K. FLEISHMAN</u>	
Date <u>10/26/93</u>	

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# MASS MEDIA BUREAU EX 8

LAW OFFICES

REDDY, BEGLEY & MARTIN

1001 22<sup>ND</sup> STREET, N. W.

SUITE 350

WASHINGTON, D. C. 20037

(202) 659-5700

DENNIS F. BEGLEY  
HARRY C. MARTIN  
MATTHEW H. MCCORMICK  
CHERYL A. KENNY  
ANDREW S. KERSTING

EDWARD B. REDDY  
(1915-1990)

FACSIMILE NUMBER  
(202) 659-5711

May 19, 1993

Roy J. Stewart, Chief  
Mass Media Bureau  
Federal Communications Commission  
1919 M Street, N.W.  
Room 314  
Washington, D.C. 20554

Re: Station KCVI(FM)  
Blackfoot, Idaho  
File No. BAPH-920917GO

Dear Roy:

This is to advise you that Richard P. Bott, II ("Bott"), assignor in the above-referenced assignment application, will not be responding to the "Supplement to Petition to Deny" filed May 14, 1993 by Radio Representatives, Inc. ("RRI"). RRI's pleading, which supplements its October 26, 1992 petition to deny, is untimely, repetitive, presents no new facts and, in our opinion, was interposed for delay only.

However, should the Commission deem it necessary for Bott to respond to RRI's May 14 supplement, please contact the undersigned.

Very truly yours,



HARRY C. MARTIN  
Counsel for  
RICHARD P. BOTT, II

HCM:mlp

cc: W. Jan Gay, Esquire ✓  
Michael Wagner, Esquire  
David D. Oxenford, Jr., Esquire  
Gerald Stevens-Kittner, Esquire

AUDIO SERVICES DIVISION

MAY 19 3 29 PM '93

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